

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY,	:	
and DANNY HAKIM,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	<b><u>COMPLAINT</u></b>
ENVIRONMENTAL PROTECTION AGENCY,	:	
	:	
Defendant.	:	
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Plaintiffs THE NEW YORK TIMES COMPANY and DANNY HAKIM, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the Environmental Protection Agency (“EPA”) in response to a request properly made by Plaintiffs.

**PARTIES**

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Danny Hakim is a reporter for *The New York Times* newspaper and an employee of The New York Times Company.

4. Defendant EPA is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

### **FACTS**

8. On November 2, 2015, Mr. Hakim submitted a FOIA request (the “Request”) to EPA (EPA-HQ-2016-000921), seeking “a copy of e-mails and attachments sent to/from E.P.A. employees to/from the following e-mail exchanges: @syngenta.com, @bayer.com, @basf.com, @monsanto.com, @croplife.org,” between January 1, 2013, and the date of the Request.

9. That same day, EPA sent Mr. Hakim a letter informing him that it was “unable to process [the] request” because its description of the records sought was insufficiently specific. EPA asked Mr. Hakim to identify the names of custodians and specify keywords for searches.

10. On November 5, 2015, in an attempt to comply with EPA’s request, Mr. Hakim limited the Request “to the key words ‘risk’ and ‘assessment’” and “to the Office of Chemical Safety and Pollution Prevention (OCSPP).”

11. On December 16, 2015, EPA informed Mr. Hakim that despite the narrowing, the Request remained “very board [*sic*] in scope and would yield a tremendous amount of records.” EPA asked Mr. Hakim to consider further narrowing the Request.

12. On December 16 or 17, 2015, Mr. Hakim narrowed the Request a second time. As amended, the Request sought copies of emails and attachments sent to and from EPA employees in the Registration Division and Health Effects Division, to and from identified e-mail exchanges – @syngenta.com, @bayer.com, @basf.com, @monsanto.com, and @croplife.org – since January 1, 2013, with the search terms “risk” and “assessment.”

13. On August 9, 2017, EPA informed Mr. Hakim that it was continuing to process the Request, and asked whether he remained interested in receiving a response. Mr. Hakim replied to EPA the same day confirming his interest in the Request.

14. On August 14, 2017, EPA wrote to Mr. Hakim to inform him that the Request remained “overly broad” for several reasons, and again asked him to clarify or narrow the scope of the Request. EPA wrote to Mr. Hakim to reiterate the same on September 5, 2017.

15. On September 6, 2017, Mr. Hakim narrowed the Request a third time. As amended, the Request seeks “communications since January 1st, 2016 to/from EPA and BASF, and Monsanto, regarding Dicamba,” with a specific interest in “the deliberations and discussions of the Dicamba drift issues, and the considerations within the Agency to restrict when Dicamba can be sprayed.”

16. On September 26, 2017, EPA informed Mr. Hakim that it had met with “subject matter experts” regarding the Request and was working with its IT office to conduct an “electronic console search” for the requested records.

17. To date, EPA has not made a determination regarding the Request.

### **COUNT I**

18. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

19. EPA is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

20. Plaintiffs have exhausted all administrative remedies under FOIA, because EPA has failed to act on the Request within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A), (C).

21. Accordingly, Plaintiffs are entitled to an order compelling EPA to produce records responsive to the Request.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

22. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

23. Order EPA to provide the requested records to Plaintiffs within 20 business days of the Court's order;

24. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

25. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York  
January 25, 2019

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